

## Internal Revenue Service

Number: **200934003**

Release Date: 8/21/2009

Index Number: 1362.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-103898-09

Date:

May 15, 2009

X =

State =

A =

Trust =

1

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Trust

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Trust

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Date

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Date

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Date5

Dear :

This responds to a letter dated January 7, 2009, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on Date 1. X made an election to be treated as an S corporation effective Date 2. On Date 3, A transferred shares of X stock to Trust 1, a revocable trust treated as a wholly-owned grantor trust under §§ 671 and 676. On Date 4, A died and Trust 1 continued to hold the X stock. On Date 5, X stock was transferred from Trust 1 to Trust 2 and Trust 3, both created under the terms of Trust 1. Trust 2 qualified as an electing small business trust (ESBT) under § 1361(e), but its trustee inadvertently failed to file an ESBT election. Trust 3 qualified as a qualified subchapter S trust (QSST) under § 1361(d), but its beneficiary inadvertently failed to file a QSST election. Consequently, X's S corporation election terminated on Date 5.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance. X further represents that from Date 2, X and its shareholders have filed all returns consistent with X's status as an S corporation. X and its shareholders have agreed to make such adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation on Date 5 was inadvertent within the meaning

of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 5 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d). This ruling is contingent upon Trust 2's trustee filing an ESBT election for Trust 2, with an effective date of Date 5, and upon Trust 3's beneficiary filing a QSST election for Trust 3, with an effective date of Date 5. Both elections must be filed with the appropriate service center within 60 days of the date of this ruling. A copy of this letter should be attached to each election.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed as to whether Trust 2 qualifies as an ESBT or whether Trust 3 qualifies as a QSST.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes